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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,651	03/16/2004	Shusuke Akazaki	107101-00050	1118
4372	7590	12/13/2007		
ARENT FOX LLP 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON, DC 20036			EXAMINER NGUYEN, TU MINH	
			ART UNIT 3748	PAPER NUMBER
			NOTIFICATION DATE 12/13/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/800,651	<b>Applicant(s)</b> AKAZAKI ET AL.	
	<b>Examiner</b> Tu M. Nguyen	<b>Art Unit</b> 3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 7-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 7-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 08/975,101.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This Office Action is a response to an Applicant's Pre-Appeal Brief Request for Review filed on October 24, 2007. A Pre-Appeal Brief Conference was conducted on November 15, 2007; and it has been decided to re-open the prosecution. Consequently, a new non-final rejection is set forth below. Overall, claims 1 and 7-14 are pending in this application.

#### *Claim Rejections - 35 USC § 251, Recapture*

2. Claims 1 and 7-14 are rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. See *Pannu v. Storz Instruments Inc.*, 258 F.3d 1366, 59 USPQ2d 1597 (Fed. Cir. 2001); *Hester Industries, Inc. v. Stein, Inc.*, 142 F.3d 1472, 46 USPQ2d 1641 (Fed. Cir. 1998); *In re Clement*, 131 F.3d 1464, 45 USPQ2d 1161 (Fed. Cir. 1997); *Ball Corp. v. United States*, 729 F.2d 1429, 1436, 221 USPQ 289, 295 (Fed. Cir. 1984). A broadening aspect is present in the reissue which was not present in the application for patent. The record of the application for the patent shows that the broadening aspect (in the reissue) relates to claim subject matter that applicant previously surrendered during the prosecution of the application. Accordingly, the narrow scope of the claims in the patent was not an error within the meaning of 35 U.S.C. 251, and the broader scope of claim subject matter surrendered in the application for the patent cannot be recaptured by the filing of the present reissue application.

A broadened reissue claim is a claim which enlarges the scope of the claims of the patent,

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i.e., a claim which is greater in scope than each and every claim of the original patent. If a disclaimer is filed in the patent prior to the filing of a reissue application, the disclaimed claims are not part of the "original patent" under 35 U.S.C. 251. The Court in *Vectra Fitness Inc. v. TNWK Corp.*, 49 USPQ2d 1144, 1147, 162 F.3d 1379, 1383 (Fed. Cir. 1998) held that a reissue application violated the statutory prohibition under 35 U.S.C. 251 against broadening the scope of the patent more than 2 years after its grant because the reissue claims are broader than the claims that remain after the disclaimer, even though the reissue claims are narrower than the claims that were disclaimed by the patentee before reissue. The reissue application was bounded by the claims remaining in the patent after a disclaimer is filed. A claim of a reissue application enlarges the scope of the claims of the patent if it is broader in at least one respect, even though it may be narrower in other respects.

A claim in the reissue which includes subject matter not covered by the patent claims enlarges the scope of the patent claims. For example, if any amended or newly added claim in the reissue contains within its scope any conceivable product or process which would not have infringed the patent, then that reissue claim would be broader than the patent claims. *Tillotson, Ltd. v. Walbro Corp.*, 831 F.2d 1033, 1037 n.2, 4 USPQ2d 1450, 1453 n.2 (Fed. Cir. 1987); *In re Ruth*, 278 F.2d 729, 730, 126 USPQ 155, 156 (CCPA 1960); *In re Rogoff*, 261 F.2d 601, 603, 120 USPQ 185, 186 (CCPA 1958).

See MPEP § 1412.02 and 1412.03.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Adamczyk, Jr. et al. (U.S. Patent 5,524,433) in view of Ogawa et al. (U.S. Patent 5,343,846).**

As shown in Figure 7, Adamczyk, Jr. et al. disclose a system for purifying exhaust gas generated by an internal combustion engine (32) having an air intake system (37) and an exhaust system which includes an exhaust pipe (43) extending from an exhaust manifold of the engine and a catalyst (44) installed in the exhaust pipe, the exhaust system exhausting gas generated by the engine to the atmosphere, comprising:

- a bypass (not numbered but clearly shown) branching out from the exhaust pipe at a location downstream of the catalyst (44) and merging to the exhaust pipe downstream of the branching point;

- an adsorber (31) installed in the bypass;

- valve means (47) which closes the bypass;

- a conduit (84) connected to the bypass at one end and connected to the air intake system for recirculating the exhaust gas to the air intake system;

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- valve control means (35) which operates the valve means to open the bypass for a period since starting of the engine to introduce the exhaust gas to the bypass such that the adsorber installed in the bypass adsorbs the unburnt component in the exhaust gas (see Figure 1); and then closes the valve means to recirculate the adsorbed unburnt component through the conduit with the exhaust gas after having desorbed from the adsorber (see Figures 2 and 7);

- EGR control means (82) which causes the exhaust gas introduced in the bypass to be recirculated to the air intake system through the conduit;

- fuel injection quantity determining means (35) for determining a quantity of fuel injection to be supplied to the engine (lines 56-59 of column 7);

- air-fuel ratio detecting means (39) for detecting an air-fuel ratio of the exhaust gas;

- feedback loop means (35) having an adaptive controller with an adaptation mechanism that estimates an adaptive parameter (an amount of HC desorbed from the adsorber recirculating back to the engine), the adaptive controller calculates a quantity of fuel injection based on the estimated adaptive parameter such that the detected air-fuel ratio converges to a desired air-fuel ratio (stoichiometric air-fuel ratio) (see at least lines 56-59 of column 7);

- EGR correction coefficient calculating means (35) for calculating an EGR correction (the amount of HC desorbed from the adsorber recirculating back to the engine) when recirculating the exhaust gas to the air intake system (line 65 of column 7 to line 6 of column 8); and

- fuel injection quantity correcting means (35) for correcting the quantity of fuel injection based on at least the EGR correction (lines 51-59 of column 7).

Adamczyk, Jr. et al., however, fail to disclose that EGR correction coefficient calculating means calculates an EGR correction coefficient; and that the fuel injection quantity correcting means corrects the quantity of fuel injection based on at least the EGR correction coefficient and a feedback correction coefficient.

As illustrated in Figure 1, Ogawa et al. disclose a control system for an internal combustion engine. As depicted in Figures 28, 29, 34, and 35 and indicated on line 5+ of column 24, Ogawa et al. teach that it is conventional in the art to compute an adhering fuel-dependent correction process that when the engine is in an EGR-performing region, a fuel injection period (TOUT in expression (32)) based on a feedback correction coefficient (KLAF) in response to a detected oxygen concentration from a LAF sensor (29) and a final direct supply ratio (Ae) which is dependent on an EGR correction coefficient (KEA) (see expression (28) and Figure 34). It would have been obvious to one having ordinary skill in the art at the time of the invention was made, to have utilized the teaching by Ogawa et al. in the system of Adamczyk, Jr. et al., since the use thereof would have been routinely utilized by those with ordinary skill in the art to accurately control an engine air-fuel ratio to a desired or target value.

**5. Claims 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adamczyk, Jr. et al. in view of Ogawa et al. as applied to claim 1 above, and further in view of Zahn et al. (U.S. Patent 5,613,359).**

Re claim 7, the modified system of Adamczyk, Jr. et al. discloses the invention as cited above, however, fails to specifically disclose that the valve control means including catalyst temperature parameter detecting means for detecting a parameter relating to a temperature of the catalyst; and determines the period based on the detected parameter.

As illustrated in Figure 1, Zahn et al. disclose an exhaust gas purifying apparatus having a first catalyst (4) and HC adsorber (6) located in a bypass passage (5); wherein an ECU (9) controls a valve (8) in a open position during a period in which the HC adsorber is within a HC adsorbing temperature range. Zahn et al. teach that it is conventional in the art to utilize a temperature detecting means (11) to detect a temperature of the first catalyst such that the period is based on the detected temperature (see claim 1). It would have been obvious to one having ordinary skill in the art at the time of the invention was made, to have utilized the teaching by Zahn et al. in the modified system of Adamczyk, Jr. et al., since the use thereof would have been routinely utilized by those with ordinary skill in the art to control an operation of a HC adsorber to minimize HC emissions during an engine cold start.

Re claim 8, in the modified system of Adamczyk, Jr. et al., the valve control means decreases the period with increasing temperature of the catalyst.

Re claim 9, in the modified system of Adamczyk, Jr. et al., the valve control means decreases the period when the engine is under high load (in which an exhaust gas temperature is higher).

Re claim 10, in the modified system of Adamczyk, Jr. et al., the valve control means decreases the period when the engine is in a failsafe condition (lines 18-25 of column 6).

**6. Claims 11-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adamczyk, Jr. et al. in view of Ogawa et al. and Zahn et al. as applied to claim 7 above, and further in view of Tomisawa (U.S. Patent 5,606,855).**



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Re claim 11, the modified system of Adamczyk, Jr. et al. discloses the invention as cited above, however, fails to specifically disclose that the parameter is a coolant temperature of the engine.

Tomisawa teaches an apparatus for estimating the temperature of a catalyst during an engine start-up simply and accurately by using a coolant temperature sensor (15). Tomisawa further teaches that the apparatus does not include an additional temperature sensor located at the catalyst, which can incur more cost to the apparatus (lines 64+ of column 1). It would have been obvious to one having ordinary skill in the art at the time of the invention was made, to have utilized the apparatus taught by Tomisawa in the modified system of Adamczyk, Jr. et al., since the use thereof would have saved cost and lowered the complexity of the system.

Re claim 12, in the modified system of Adamczyk, Jr. et al., the valve control means decreases the period with increasing temperature of the catalyst.

Re claim 13, in the modified system of Adamczyk, Jr. et al., the valve control means decreases the period when the engine is under high load (in which an exhaust gas temperature is higher).

Re claim 14, in the modified system of Adamczyk, Jr. et al., the valve control means decreases the period when the engine is in a failsafe condition (lines 18-25 of column 6).

### ***Response to Arguments***

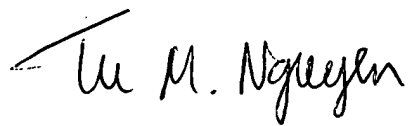
7. Applicant's arguments with respect to the references applied in the previous Office Action have been fully considered but they are moot in view of the new ground(s) of rejection.

*Communication*

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Tu Nguyen whose telephone number is (571) 272-4862.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Thomas E. Denion, can be reached on (571) 272-4859. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TMN

Tu M. Nguyen

December 5, 2007

Primary Examiner

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